(3)

Supreme Court, U.S.
FILED
OCT 22 2001
CLERK

No. 01-485

IN THE
Supreme Court of the United States

FARMERS INSURANCE EXCHANGE,
Petitioner,

v.

ROSE M. BELL, LOREN D. MITCHELL, RACHEL POESCHEL, WYNN ANDERSON AND JOSEPH C. KOKAISL, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED,
Respondents.

On Petition For A Writ Of Certiorari
To The Court Of Appeal Of California,
First Appellate District

BRIEF *AMICI CURIAE* OF THE AMERICAN INSURANCE ASSOCIATION, THE CHAMBER OF COMMERCE OF THE UNITED STATES, AND THE CALIFORNIA CHAMBER OF COMMERCE IN SUPPORT OF PETITIONER

Of counsel:
CRAIG A. BERRINGTON
AMERICAN INSURANCE ASSOCIATION
1130 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 828-7100

WILLIAM J. KILBERG, P.C.
Counsel of Record
THOMAS G. HUNGAR
JASON C. SCHWARTZ
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 955-8500

Counsel for Amici Curiae

[Additional of counsel listed on inside front cover]

22 pp

Of counsel:
STEPHEN A. BOKAT
ROBIN S. CONRAD
JOSHUA A. ULMAN
NATIONAL CHAMBER
LITIGATION CENTER
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337

FRED MAIN
CALIFORNIA CHAMBER OF
COMMERCE
P.O. Box 1736
Sacramento, CA 95812
(916) 444-6670

QUESTION PRESENTED

This brief addresses the first question presented by the petition, whether courts should consider the nature of an employer's business (or that of its customers) as a whole, rather than the character of the internal department where employees work, in deciding whether the employees are production workers entitled to overtime pay under the principles embodied in the Fair Labor Standards Act.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

INTEREST OF *AMICI CURIAE* 1

STATEMENT 3

ARGUMENT 5

I. This Court Has Jurisdiction To Review The California Court Of Appeal's Erroneous Interpretation Of Federal Law 5

II. The California Court of Appeal's Interpretation Of The Administrative/Production Worker Dichotomy, Essential To Federal And State Overtime Jurisprudence, Is Fundamentally Flawed 7

III. Review Is Warranted Because This Case Raises Issues Of Great Importance To The American Workplace 12

CONCLUSION 15

TABLE OF AUTHORITIES

Cases **Page(s)**

Bell v. Farmers Insurance Exchange, 87 Cal. App. 4th 805 (2001).....5, 6, 8, 9

Commodore Home Systems, Inc. v. Superior Court, 32 Cal. 3d 211 (1982).....3

Copas v. East Bay Municipal Util. Dist., 61 F. Supp. 2d 1017 (N.D. Cal. 1999).....11

Dalheim v. KDFW-TV, 918 F.2d 1220 (5th Cir. 1990).....9

Dyna-Med, Inc. v. Fair Employment & Housing Commission, 43 Cal. 3d 1379 (1987).....3

Freeman v. National Broadcasting Co., Inc., 80 F.3d 78 (2d Cir. 1996).....14

Guz v. Bechtel National, Inc., 24 Cal. 4th 317 (2000).....3

Haywood v. North American Van Lines, 121 F.3d 1066 (7th Cir. 1997).....9, 10

Hicks v. Feiock, 485 U.S. 624 (1988).....7

Martin v. Cooper Electric Supply Co., 940 F.2d 896 (3d Cir. 1991).....9

Munizza v. State Farm Mut. Auto. Ins. Co., No. 95-35794, 1996 WL 711563, 103 F.3d 139 (9th Cir. Dec. 5, 1996).....13

Newman v. Emerson Radio Corp., 48 Cal. 3d 973 (1989).....3

Ohio v. Reiner, 121 S. Ct. 1252 (2001).....7

Reich v. John Alden Life Ins. Co., 126 F.3d 1 (1st Cir. 1997).....8, 9, 10

Renna v. County of Fresno, 78 Cal. App. 4th 1 (2000).....12

Rojo v. Kliger, 52 Cal. 3d 65 (1990).....3

Three Affiliated Tribes v. Wold Engineering, P.C., 467 U.S. 138 (1984).....7

Turner v. Anheuser-Busch, 7 Cal. 4th 1238 (1994).....3

United Air Lines v. Mahin, 410 U.S. 623 (1973).....7

Webster v. Public School Employees, 247 F.3d 910 (9th Cir. 1997).....10, 11, 12

Statutes and Legislative Materials

29 U.S.C. § 201 *et seq.*.....5

29 U.S.C. § 213.....5

29 U.S.C. § 216(b).....12

81 Cong. Rec. 4983 (daily ed. May 24, 1937).....14

H.R. Rep. No. 75-1452 (1937).....14

S. Rep. No. 75-884 (1937).....14

Regulations

29 C.F.R. § 541.2 8

29 C.F.R. § 541.2(a)(1) 6

29 C.F.R. § 541.205(c)(5) 11, 12

State of California Industrial Welfare Commission Wage Order No. 4 ..... 5, 6, 8

Rules

Sup. Ct. R. 37 1

Other Authorities

United States General Accounting Office, *Fair Labor Standards Act: White Collar Exemptions in the Modern Work Place*, Report to the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives (Sept. 1999) 13-14

BRIEF *AMICI CURIAE* OF THE AMERICAN INSURANCE ASSOCIATION, THE CHAMBER OF COMMERCE OF THE UNITED STATES, AND THE CALIFORNIA CHAMBER OF COMMERCE IN SUPPORT OF PETITIONER

The American Insurance Association, the Chamber of Commerce of the United States, and the California Chamber of Commerce respectfully submit this *amici curiae* brief in support of the petition for a writ of certiorari in this case.[1] *Amici* support the petition, and offer their views in particular with regard to the first question presented – the proper scope of inquiry in assessing whether an employee is a production worker entitled to overtime or an administrative worker exempt from overtime requirements under federal and California law.

INTEREST OF *AMICI CURIAE*

Amicus American Insurance Association's 370 insurers write more than $76 billion in premiums each year, including over $10 billion in California. AIA member-companies offer all types of property and casualty insurance including personal and commercial auto insurance, commercial property and liability coverage for small businesses, workers' compensation, homeowners' insur-

---

[1] Pursuant to this Court's Rule 37.2, the written consent of the parties to the filing of this brief is being lodged herewith. Pursuant to this Court's Rule 37.6, *amici* represent that this brief was not authored in whole or in part by counsel for any party, and no person or entity other than *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of the brief.

ance, medical malpractice coverage, and product liability insurance.

AIA member-companies employ many claims adjusters, in California and throughout the United States. The importance of the decision below to AIA and to its members cannot be overstated – the Court of Appeal's incorrect application of an essential component of the federal and state wage-and-hour regulatory regimes could result in significant and unjustified costs to insurance companies as well as inconvenience and inflexibility for claims adjusters and other administrators who should properly be exempt from the rigid structure imposed upon lower-level laborers viewed by the law as unable to protect themselves.

Amicus Chamber of Commerce of the United States (the "Chamber") is the world's largest business federation, representing an underlying membership of nearly three million businesses and organizations of every size and in every industry sector and geographical region of the country, including a significant number of members in California. A principal function of the Chamber is to represent the interests of its members by filing amicus briefs in cases involving issues of vital concern to the nation's business community. This case presents such vital issues for countless American employers.

Amicus California Chamber of Commerce (the "California Chamber") is a voluntary, non-profit California-wide business association with more than 11,000 members, both individual and corporate, who represent virtually every economic interest in the state. Ninety percent of the California Chamber's members are small or medium sized businesses which it represents before the Legislature, local governing bodies, and the courts on a broad range of issues affecting business.

All of the California Chamber's members are exposed to the risk of lawsuits brought by current and former employees based on various wage-and-hour theories such as the one presented by the plaintiffs in this case. As part of its services to employers in the state, the California Chamber has frequently participated as *amicus curie* in major employment-related cases, including *Guz v. Bechtel National, Inc.*, 24 Cal. 4th 317 (2000), *Turner v. Anheuser-Busch*, 7 Cal. 4th 1238 (1994), *Rojo v. Kliger*, 52 Cal. 3d 65 (1990), *Newman v. Emerson Radio Corp.*, 48 Cal. 3d 973 (1989), *Dyna-Med, Inc. v. Fair Employment & Housing Commission*, 43 Cal. 3d 1379 (1987), and *Commodore Home Systems, Inc. v. Superior Court*, 32 Cal. 3d 211 (1982).

In this case, the Court of Appeal decided a question of critical importance to the California and U.S. Chambers, effectively eviscerating the administrative exemption to the federal and California wage-and-hour laws. The court's decision has been publicized throughout the California employment bar, and it will spawn massive litigation and create significant, unexpected costs unless this Court corrects the California court's misinterpretation of federal law on this issue. As representatives of the employers who might be unfairly held liable for overtime pay to employees who properly should be classified as exempt administrators, the California and U.S. Chambers have a substantial interest in this matter.

STATEMENT

The Court of Appeal held that insurance claims adjusters do not qualify for the "administrative" exemption to state overtime requirements because they are production employees who produce the "product" (*i.e.*, claims adjusting services) of the branch claims offices in which they are employed. That decision is premised on a fundamental misunderstanding of the applicable legal prin-

ciples, conflicts with settled precedent, and creates widespread uncertainty and confusion in the law governing wage-and-hour claims.

The Court of Appeal purported to follow the federal Fair Labor Standards Act (the "FLSA") in construing California law on the question whether insurance claims adjusters are "administrative" employees and are therefore exempt from payment of overtime compensation under the California wage-and-hour laws. Unfortunately, however, the court's analysis of federal law rests upon glaring and troublesome errors that, unless corrected, will have a devastating ripple effect far beyond the contours of this case.

Amici will examine one of the Court of Appeal's principal errors that is of significance not only in this case but in many others – the lower court's failure to apply properly the so-called "administrative/production worker dichotomy," described in detail below. In particular, in its analysis of this dichotomy under applicable FLSA precedents, the Court of Appeal looked solely to the role of the employees' duties in relationship to the particular business unit (*i.e.*, the branch claims offices) for which they worked, as opposed to the business enterprise as a whole. That approach has been expressly rejected by the federal case law interpreting the FLSA upon which the Court of Appeal relied. Contrary to the Court of Appeal's misconception, that case law makes clear that the administrative/production worker dichotomy must be analyzed by reference to the employer's business *as a whole*, not by examining the employee's particular business unit in isolation.

ARGUMENT

I. This Court Has Jurisdiction To Review The California Court Of Appeal's Erroneous Interpretation Of Federal Law

This Court has jurisdiction to review the judgment below because the California Court of Appeal predicated its interpretation of state law on its erroneous view of a critical federal doctrine that has been incorporated wholesale into state wage-and-hour regulations.

Both the FLSA, 29 U.S.C. § 201 *et seq.*, and California Industrial Welfare Commission Wage Order No. 4 require, among other things, that employers compensate certain employees at an overtime rate for hours worked over 40 in a particular workweek. The federal and state regulatory regimes exempt from their operation employees classified as administrators, executives or professionals, allowing employees in those exempt categories greater flexibility with regard to their compensation and hours of work. 29 U.S.C. § 213; Wage Order No. 4 at 1(A)(2) (Pet. App. 83-84).

California relies heavily on federal interpretations for guidance as to a number of issues under its wage orders, including the scope of the exemption for employees classified as administrators. Pet. App. 13. After examining the regulatory history of the Industrial Welfare Commission's wage orders, California case law, and applicable opinion letters of the California Division of Labor Standards Enforcement (one of which expressly adopts federal standards for the administrative exemption), the Court of Appeal concluded that "federal authorities are relevant to interpretation of the term 'administrative capacity' [as it is used in Wage Order No. 4]." *Id.* at. 16

In particular, the Court of Appeal found that the prior version of Wage Order No. 4 (which governs the respondents' claims) implicitly incorporated the so-called "administrative/production worker dichotomy," a federal law doctrine discussed in detail below. *Id.* at 22.[2] The Court of Appeal noted that the doctrine arises from the "authoritative interpretation" of the federal courts concerning the statutory term "administrative," a term "that appears in a closely parallel context" in Wage Order No. 4. *Id.* at 23. Indeed, the Court of Appeal relied exclusively on federal case law in its discussion of the administrative/production worker dichotomy, noting in its holding that it was "[f]ollowing federal precedents." *Id.* at 37. Thus, the Court of Appeal's decision with regard to this doctrine was inextricably intertwined with and directly controlled by its view of federal law.

This Court, of course, may not revise a state court's interpretation of state law, but this Court "retains a role

---

[2] The current version of Wage Order No. 4 expressly incorporates the federal language from which the administrative/production dichotomy is derived. *Compare* Wage Order No. 4-2001 at 1(A)(2)(a)(i) (Pet. App. 83) (defining an administrative exempt employee as one "[w]hose duties and responsibilities involve . . . *[t]he performance of office or nonmanual work directly related to management policies or general business operations of his/her employer or his/her employer's customers*") (emphasis added) *with* 29 C.F.R. 541.2(a)(1) (Pet App. 56) (defining an administrative exempt employee as one "[w]hose primary duty consists of . . . *[t]he performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers*") (emphasis added). Thus, the question of federal law at issue in this case has continuing importance in the administration of California's regulatory scheme (as well as the application of the FLSA in California and throughout the United States).

when a state court's interpretation of state law has been influenced by an accompanying interpretation of federal law." *Three Affiliated Tribes v. Wold Engineering, P.C.*, 467 U.S. 138, 152 (1984); *accord Ohio v. Reiner*, 121 S. Ct. 1252, 1254 (2001); *Hicks v. Feiock*, 485 U.S. 624, 641 (1988); *United Air Lines v. Mahin*, 410 U.S. 623, 630 (1973). "If the state court has proceeded on an incorrect perception of federal law, it has been this Court's practice to vacate the judgment of the state court and remand the case so that the court may reconsider the state-law question free of misapprehensions about the scope of federal law." *Three Affiliated Tribes*, 467 U.S. at 152.

This case presents a situation akin to those at issue in *Three Affiliated Tribes* and similar cases: here, the state court's interpretation of state law was based upon its erroneous interpretation of federal precedents that influence and indeed control the resolution of the underlying state law question. Accordingly, the state court examined federal case law and decided a federal issue, and this Court is fully empowered to review the judgment in order to correct the state court's misperception of that threshold federal issue. *Cf. Reiner*, 121 S. Ct. at 1254 (this Court has "jurisdiction over a state-court judgment that rests, as a threshold matter, on a determination of federal law").

II. The California Court of Appeal's Interpretation Of The Administrative/Production Worker Dichotomy, Essential To Federal And State Overtime Jurisprudence, Is Fundamentally Flawed

In this case, the Court of Appeal erroneously concluded that insurance claims adjusters employed by Farmers Insurance Exchange ("FIE") were not administrative employees within the meaning of the administra-

tive exemption under Wage Order No. 4. In so doing, the Court of Appeal fundamentally misapplied a critical component of the analysis governing the determination whether an employee qualifies for the administrative exemption under the FLSA – the so-called "administrative/production worker dichotomy."

As the Court of Appeal correctly recognized, under the FLSA, an exempt administrative employee is one who performs "work 'directly related to management policies or general business operations of his employer or his employer's customers.'" Pet. App. 23 (quoting 29 C.F.R. § 541.2). Thus, administrative employees are to be distinguished from "production" employees, who do not perform "work directly related to management policies or general business operations"; rather, they produce the goods or services of the employer. By definition, production employees are not exempt administrative employees.

This dichotomy has been applied by courts not only to traditional production of tangible goods, but also to the production of intangibles. *See Reich v. John Alden Life Ins. Co.*, 126 F.3d 1, 23 (1st Cir. 1997) ("non-manufacturing employees can be considered 'production' employees in those instances where their job is to generate (*i.e.*, 'produce') the very product or service *that the employer's business offers to the public*.") (emphasis added).

In this case, the Court of Appeal applied the dichotomy and reached the conclusion that the FIE claims adjusters performed production work, as opposed to "work 'directly related to management policies or general business operations of'" FIE or FIE's customers, because the units of FIE in which they worked – *i.e.*, the branch claims offices in California – were engaged in claims adjusting. Pet. App. 23-33, 37. The court erred, how-

ever, by examining "only . . . the business function *of the branch claims offices* in California where the plaintiffs worked." Pet. App. 31 (emphasis added).

In order for a non-manufacturing employee to qualify as a production worker, he or she must produce "the very product or service that *the employer's business* offers to the public." *John Alden*, 126 F.3d at 23 (emphasis added). For example, in *Martin v. Cooper Electric Supply Co.*, the Third Circuit held that inside salespersons for an electrical products wholesaler were "production" employees, not exempt administrators, because they produced the product that the business was designed to produce – *i.e.*, they produced wholesale sales. 940 F.2d 896, 903-05 (3d Cir. 1991). Similarly, in *Dalheim v. KDFW-TV*, the Fifth Circuit held that news producers were production employees because they "produced" the news segments that were the television station's product. 918 F.2d 1220, 1230-31 (5th Cir. 1990).

If instead the employee provides services "ancillary to an employer's *principal production activity*," he or she is not a production worker. *Cooper Elec. Supply Co.*, 940 F.2d at 904 (emphasis added). For example, in *John Alden*, the First Circuit held that insurance company marketing representatives were not production employees because they were not "involved in the design or generation of insurance policies, the very product 'that the enterprise exists to produce and market.'" 126 F.3d at 9 (quoting *Dalheim*, 918 F.2d at 1230). Similarly, in *Haywood v. North American Van Lines*, the Seventh Circuit held that a customer service coordinator, whose duties in responding to customer and attorney contacts were similar to those of a claims adjuster, performed functions ancillary to her employer's business of moving household goods. 121 F.3d 1066, 1072 (7th Cir. 1997). The analyses in *John Alden* and *Haywood* were per-

formed based upon an examination of the employee's duties in relation to the entire business operation of the employer. *See John Alden*, 126 F.3d at 10 ("In the instant case, the activities of the marketing representatives are clearly ancillary to John Alden's principal production activity – the creation of insurance policies . . . ."); *Haywood*, 121 F.3d at 1072 n.6 ("We reject Ms. Haywood's suggestion that she is a production rather than an administrative employee. North American's 'product' is moving goods from point A to point B. There is no evidence that Ms. Haywood is involved in producing this good in any way . . . .").

More recently, in *Webster v. Public School Employees*, the Ninth Circuit directly addressed the proper scope of a court's inquiry in relation to the administrative/production dichotomy. 247 F.3d 910 (9th Cir. 2001). The plaintiff, a labor union field representative, argued that he "produced" collective bargaining agreements for the bargaining unit "customer" he was assigned to represent. *Id.* at 915. The court rejected the plaintiff's narrow view of production, holding instead that the plaintiff performed exempt administrative work for his employer's customer (the bargaining unit). *Id.* at 916. The court noted that "[i]f [it] were to accept [the plaintiff's] position . . . then any work – including that of a president or CEO – for a legal entity that addresses primarily management or administrative concerns, such as a corporate holding company, would be production. This would defeat the purpose of the administrative exemption." *Id.*

Thus, the employee's duties must be examined in relation to the purpose of the entire enterprise (either that of his or her employer or that of the employer's customers). *Id.* Any other interpretation would make almost every worker a "production worker," because most

workers would undoubtedly assert that they are productive – *i.e.*, that they generate the work product assigned to be completed by employees in their particular department. The Ninth Circuit rejected such a strained formulation, observing that "[t]he purpose of the dichotomy is to clarify the meaning of 'work directly related to the management policies or general business operations,' not to frustrate the purpose and spirit of the entire exemption." *Id.* at 916; *accord Copas v. East Bay Municipal Util. Dist.*, 61 F. Supp. 2d 1017, 1025-26 (N.D. Cal. 1999) (rejecting the claim of a public relations officer for a water utility that she was a production worker because she produced "written publications that were the 'product' of her department" and holding instead that the public relations officer's services "did not relate to the day-to-day production of the East Bay's water supply or the treatment of wastewater").

These decisions are in accord with the FLSA regulations themselves, which recognize that certain exempt administrators may "produce" services ancillary to an entity's principal production activity and do not thereby become nonexempt production workers. The FLSA regulations expressly provide that:

> The test of 'directly related to management policies or general business operations' is also met by many persons employed as advisory specialists and consultants of various kinds, credit managers, safety directors, *claim agents and adjusters*, wage-rate analysts, tax experts, account executives of advertising agencies, customers' brokers in stock exchange firms, promotion men, and many others.

29 C.F.R. § 541.205(c)(5) (Pet. App. 69-70) (emphasis added).

In sum, while the decision of the Court of Appeal purports to follow federal law, it is in direct conflict with the weight of persuasive federal authority, which rejects the Court of Appeal's flawed method of analysis and recognizes that use of such a method would lead to absurd results. The Court of Appeal's erroneous interpretation of federal law is particularly troubling because the state courts are authorized to entertain overtime actions not only under state wage-and-hour law but also under the FLSA. *See* 29 U.S.C. § 216(b); *see also, e.g.*, *Renna v. County of Fresno*, 78 Cal. App. 4th 1 (2000). Given that the Ninth Circuit is one of the federal courts that have directly addressed this question in a manner inconsistent with the approach taken by the court below (*see Webster*, *supra*), the federal and state appellate courts with jurisdiction over overtime claims brought in California are now in direct conflict over the interpretation of the administrative/production dichotomy. This untenable situation will undoubtedly lead to forum-shopping and inconsistent results in the same State based upon the fortuity of which court system hears the case. This Court's review is essential to resolve this unseemly conflict among the state and federal appellate courts in California.

III. Review Is Warranted Because This Case Raises Issues Of Great Importance To The American Workplace

This case is extremely important for the insurance industry because the erroneous analysis of the Court of Appeal has upset long-settled expectations concerning the proper classification of insurance claims adjusters. These employees have traditionally been treated as salaried exempt administrators, entitled to flexibility with regard to their pay and hours of work. In fact, as noted above, insurance claims adjusters are specifically identi-

fied in a list of exempt administrative employees in the federal regulations. *See* 29 C.F.R. § 541.205(c)(5) (Pet. App. 69-70) ("The test of 'directly related to management policies or general business operations' is also met by . . . *claim agents and adjusters* . . . .") (emphasis added). Accordingly, in an unpublished decision, the Ninth Circuit treated this issue in an appropriately summary manner, noting simply that the applicable federal regulation "specifically identifies 'insurance claims adjuster' as an example of an exempt administrative employee." *Munizza v. State Farm Mut. Auto. Ins. Co.*, No. 95-35794, 1996 WL 711563, at *4, 103 F.3d 139 (9th Cir. Dec. 5, 1996). The Ninth Circuit concluded that there could "be no real question that the activities performed by [the plaintiff, a claims adjuster for State Farm] in his position as Claim Specialist clearly fit within the applicable standards that define an exempt employee's responsibilities." *Id.*

In addition to the unexpected, mammoth financial liability for insurance company employers (and the corresponding windfall for claims adjusters) that will result from upsetting years of prior accepted law, this sudden change presents substantial logistical obstacles. Having viewed claims adjusters as exempt administrators, insurance companies typically have not kept detailed records of the work hours of these employees. As a result, calculation of back overtime pay will require incredible feats of memory, sophisticated mathematical models, and, most likely, a good deal of guesswork, all of which will no doubt produce even more litigation.

This is also an extremely important case for countless other employers and employees outside of the insurance industry. Issues concerning the classification of employees as exempt or non-exempt are critical to the operation of the modern workforce. *See* United States

General Accounting Office, *Fair Labor Standards Act: White Collar Exemptions in the Modern Work Place*, Report to the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives (Sept. 1999) at 2 (noting that "[i]n 1998, between 20 and 27 percent of the full-time U.S. workforce – or 19 to 26 million workers – were executive, administrative or professional employees covered by white-collar exemptions of the FLSA").

The FLSA was enacted in 1938 to provide "protection to those who toil in factory and on farm to obtain a fair day's pay for a fair day's work." Franklin D. Roosevelt, message to Congress, May 24, 1937 (81 Cong. Rec. 4983 (daily ed. May 24, 1937), S. Rep. No. 75-884 at 2 (1937)). It was designed "in a modest way to raise the wages of the most poorly paid workers and to reduce the hours of those most overworked." H.R. Rep. No. 75-1452 at 9 (1937). The Court of Appeal's flawed analysis of this important federal wage-and-hour principle will take the FLSA far afield from those noble purposes, instead producing erroneous results in other cases involving workers who should correctly be classified as exempt administrators and allowing a Depression-era law designed to serve as a shield for the lowest paid workers to be used instead as a sword by well-compensated white-collar administrators. *Cf. Freeman v. National Broadcasting Co., Inc.*, 80 F.3d 78, 86 (2d Cir. 1996). Accordingly, this Court should grant review in this case in order to correct the Court of Appeal's misinterpretation of federal law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

Of counsel:
CRAIG A. BERRINGTON
AMERICAN INSURANCE
SSSOCIATION
1130 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 828-7100

STEPHEN A. BOKAT
ROBIN S. CONRAD
JOSHUA A. ULMAN
NATIONAL CHAMBER
AITIGATION CENTER
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337

FRED MAIN
CALIFORNIA CHAMBER OF
AOMMERCE
P.O. Box 1736
Sacramento, CA 95812
(916) 444-6670

WILLIAM J. KILBERG, P.C.
Counsel of Record
THOMAS G. HUNGAR
JASON C. SCHWARTZ
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 955-8500

Counsel for Amici Curiae

October 22, 2001